

REMARKS

Claim 6-11 and 20-23 are currently pending and claims 1-5 and 12-19 are no longer pending.

Claim 20 was amended to remove terms relating to cancelled claim 19 and to incorporated the transitional phrase “consisting essentially of” in view of the Examiner’s position articulated in Paper No. 14.

It is submitted that this was an oversight and the present amendment corrects this oversight and introduces no new matter.

Objection

Claims 6, 20, 22, and 23 were objected to for containing an being dependent on cancelled claim 19. (Paper No. 14 at 2.) As noted above, claim 20 has been amended to remedy the oversight in previously amending claims 20. It is submitted that the objection has been rendered moot and should be withdrawn.

Obviousness Rejection

Claims 20-23 and 6-11 were rejected under 35 U.S.C. 103(a) as being over WO 97/38738 (“Bodiguel”) in view of U.S. Patent No. 5,939,050 (Iyer et al.) (“Iyer”) and WO 97/25106 (Romano et al.) (“Romano”).

For the reason set forth below, the rejection is traversed.

Bodiguel purports to disclose a sanitary pad containing one or more antiseptics. The antiseptics are of natural origin and may be chosen among the essential oils of geranium, lavender or citronella. (Page 2 of the translation, attached to this paper.) Preferably, the sanitary pad contains from about 0.2 mg to about 20 g antiseptic.

Iyer purports to disclose a composition useful in products such as cleaners, wipes, pharmaceuticals and oral hygiene products. (Col. 3, lines 48-50.) Examples of oral hygiene products include dentifrices and mouth rinses. (Col. 3, lines 50-51.) Combinations of microbial agents formed in accordance with the purported invention of Iyer include: (1) an antimicrobial agent A selected from berberine, cedarwood oil, chloramphenicol, citral, citronella oil, cocamidopropyl dimethylglycine, Glycyrrhiza glabra extract, hinokitiol, juicy fruit basil oil, Juniper berries oil, lemon basil oil, lemon oil, and Rosmarinus officinalis oil; and (2) an antimicrobial agent B different from

antimicrobial agent A selected from the same list. (Col. 5, lines 49-57.) The combination of the antibacterial agents are preferred because (1) the degree to which the minimal inhibitory concentration (MIC) of the individual antimicrobial agents in the combination is reduced compared to the MIC of those agents when evaluated alone; and (2) the MIC for the individual antimicrobial agents that is achieved due to the combination of agents. (Col. 6, lines 29-35.)

Romano purports to disclose a liquid disinfecting composition having a peroxygen bleach and an antimicrobial active of essential oils, or mixtures thereof. (Page 4, lines 31-33.)

In making the rejection, the Examiner acknowledges that Bodiguel does not specifically disclose the essential oils claimed by applicant (claim 20). (Paper 10 at 4.)

To fill the acknowledged gap, the Examiner relied on Iyer to disclose antimicrobial compositions for use in wipes, cleaners, pharmaceuticals and oral hygiene products and on Romano to disclose liquid disinfecting compositions having an antimicrobial active of essential oil, which have a pleasant scent. (Paper 10 at 4 to 5.)

The Examiner then concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sanitary napkins of Bodiguel to include the antimicrobial and aromatic essential oils disclosed by Iyer and Romano because Iyer and Romano suggest that such essential oils have a pleasant odor and are effective antimicrobials and one of ordinary skill in the art would reasonably expect the resulting sanitary napkins to have antiseptic/antimicrobial properties as well as to suppress or eliminate any malodors associated with the use of a sanitary napkin. (Paper 10 at 5.) The Examiner further reasons that such a modification would have been motivated by the reasoned expectation that the resulting sanitary napkins, during use would have prevented unwanted microbial growth while simultaneously providing pleasant aromas. (Paper 10 at 5.)

In addition, the Examiner newly asserted that “[i]t is Applicant’s position that the prior art does not disclose or fairly suggest the claimed invention.” (Paper No. 14 at 3.) With all due respect, it is not seen where in the record such a position is set forth. Rather the record submitted by the undersigned is explicitly clear that certain facts could not be located in either the record created by the Examiner or in the cited documents. Further, it

was not seen where the Examiner provided any reasoning that one of ordinary skill in the art would be motivated to combine the documents. It is respectfully submitted that the position espoused by the Examiner concerning “Applicant’s position” vis-à-vis “prior art” is not commensurate in scope with the record.

For example, it was previously submitted that Iyer and Romano appear not to disclose as much as the Examiner asserts. In particular, both disclose essential oils in combination with other required agents for effective disinfection or MIC. It is not seen where either document discloses the use of essential oils alone as effective agents as required in the presently pending claims. The Examiner still has not provided any guidance as to where in the cited documents such facts can be found. In fact, the Examiner admitted that neither of the cited documents “discloses the use of essential oils, alone, as effective agents.” (Paper No. 14 at 3.)

The Examiner provided an explanation of the transitional phrase “comprising” at Paper No. 14 at 4. In view of the Examiner’s position, claim 20 was amended to remove this phrase and to substitute the transitional phrase “consisting essentially of” therefor. It is respectfully submitted that the Examiner’s explanation is no longer relevant to the claimed subject matter.

The Examiner also asserted that “the references suggest that each essential oil independently has antimicrobial and aromatic properties”, that is, “the references do not teach that the essential oils obtain anti-microbial properties only upon combination with other agents.” (Paper No. 14 at 4.) With all due respect, it is not seen where in the references that “each essential oil independently has antimicrobial and aromatic properties.” Nor has any evidence in this record been located to support this factual assertion. Should the Examiner wish to take notice to establish these facts concerning the specific essential oils of the claimed subject matter, the Examiner is requested to provide such a showing in accordance with MPEP § 2144.03 and 37 CFR 1.104(d)(2).

Additionally, it is again submitted that the Examiner failed to provide evidence that one of ordinary skill in the art would have been motivated, from the teachings of the references, to arrive at the claimed invention. No instance has been located where Bodiguel discloses or suggests the claimed invention of newly amended claims 20, 6, 22, 23 or claims 21 and 7-11. Nor has the Examiner provided any factual evidence of where

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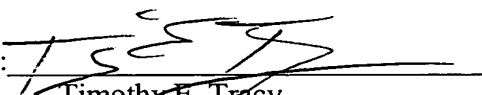
in Iyer and Romano there is disclosure of the use of rosemary oil, clove oil, ginger oil, tumeric oil, chamomile oil, lemon grass oil, thyme oil, achillea oil, thulasi oil, clary sage oil, cedar (hinoki) oil, and mixtures thereof as effective agents as required by the amended claims.

It is also asserted that one of ordinary skill in the art of absorbent articles would not have turned to aqueous disinfecting or cleaning compositions to combine with the sanitary pad of Bodiguel. There is no motivation or desirability for one skilled in the art of sanitary napkins to consider solutions designed to clean floors or kill bacteria causing dental plaque in the oral cavity. As such the Examiner has not met the basic considerations which apply to obviousness rejections.

Accordingly, for the reasons set forth above, entry of the amendments, withdrawal of the rejections and objections, and allowance of the claims is respectfully requested.

Finally, the Examiner is invited to call the applicants' undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicants respectfully request the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

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